

**Dostal Enterprises, Inc. and Machinists Local Lodge No. 1484, International Association of Machinists and Aerospace Workers, AFL-CIO
Maersk Pacific Limited d/b/a Maersk Stevedoring Company and Donald J. Kuehn. Cases 21-CA-29575 and 21-CA-29712**

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by the Union on August 18, 1993, in Case 21-CA-29575, and a charge filed by Donald J. Kuehn, an individual, on October 29, 1993, in Case 21-CA-29712, the Acting General Counsel of the National Labor Relations Board issued an order consolidating cases and consolidated complaint on December 10, 1993, against Respondent Maersk, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act and against Respondent Dostal, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On January 11, 1994, the Acting General Counsel issued an Erratum. Although properly served copies of the charge and consolidated complaint, Respondent Maersk failed to file an answer.

On January 31, 1994, the Acting General Counsel filed a Motion for Summary Judgment against Respondent Maersk with the Board in Case 21-CA-29712.¹ On February 2, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent Maersk filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Respondent Maersk has not requested an extension of time to file an answer. By letter dated January 5, 1994, counsel for the Acting General Counsel informed Respondent Maersk that if an answer was not filed by January 12, 1994, summary judgment would be sought.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

¹Case 21-CA-29575, which was consolidated Case 21-CA-29712, shall be severed and remanded to the Regional Director for further appropriate action.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Dostal is an Illinois corporation with an office and place of business in Long Beach, California, and has been engaged in the repair and maintenance of transportation equipment. During the 1992 calendar year, a representative period, Respondent Dostal, in conducting its business operations, derived gross revenues in excess of \$50,000 and provided goods and services valued in excess of \$50,000 to Respondent Maersk, an enterprise within the State of California, which during the same time period functioned as an essential link in the transportation of freight in interstate commerce. Respondent Maersk, a corporation with a facility in Long Beach, California, has been engaged in the stevedoring business. During the 1992 calendar year, Respondent Maersk, in conducting its business operations within the State of California, derived gross revenues in excess of \$50,000 for stevedoring services in connection with the transportation of freight in interstate commerce under arrangements with, and as an agent for, various common carriers, each of which operates between various States of the United States. We find that Respondent Maersk functions as an essential link in the transportation of freight in interstate commerce and that Respondent Dostal and Respondent Maersk are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 6, 1993, Respondent Maersk interrogated an employee about the employee's union membership, advised an employee that Respondent Maersk would never agree to allow the employee to be covered by the collective-bargaining agreement between Respondent Dostal and the Union, and told an employee that the employee was terminated for joining the Union.

About August 6, 1993, Respondent Maersk requested the termination of Respondent Dostal's employee, Kuehn. About August 6, 1993, Respondent Dostal discharged its employee, Kuehn. Respondent Maersk engaged in this conduct because Kuehn joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, Respondent Maersk has been interfering with, restraining, and coercing employees in the exercise of the rights guar-

anteed in Section 7 of the Act and has been discriminating in regard to the hire and tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent Maersk has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent Maersk has violated Section 8(a)(1) and (3) by causing the termination of Respondent Dostal employee Donald J. Kuehn, we shall order Respondent Maersk to request that Respondent Dostal offer Donald J. Kuehn immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order Respondent Maersk to make Kuehn whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent Maersk shall also be required to request that Respondent Dostal Enterprises, Inc. expunge from its files any and all references to the unlawful termination, and to notify Kuehn in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Maersk Pacific Limited d/b/a Maersk Stevedoring Company, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership or activities.

(b) Advising employees that it would never agree to allow them to be covered by a collective-bargaining agreement.

(c) Telling employees that they have been terminated because of their union membership or activities.

(d) Causing the termination of employees because of their union membership or activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Request that Dostal Enterprises, Inc. offer Donald J. Kuehn immediate and full reinstatement to his

former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Request that Dostal Enterprises, Inc. remove from its files any reference to the termination of Donald J. Kuehn and notify him in writing that this has been done.

(c) Make Donald J. Kuehn whole for any loss of pay and benefits he suffered by reason of the unlawful discrimination against him, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Long Beach, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent Maersk's authorized representative, shall be posted by Respondent Maersk immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Maersk to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Maersk has taken to comply.

IT IS FURTHER ORDERED that Case 21-CA-29575 is severed and remanded to the Regional Director for further appropriate action.

Dated, Washington, D.C. February 28, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their membership in or activities on behalf of Machinists Local Lodge No. 1484, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization.

WE WILL NOT advise employees that we would never agree to allow them to be covered by a collective-bargaining agreement.

WE WILL NOT tell employees that they have been terminated because of their union membership or activities.

WE WILL NOT cause the termination of employees because of their union membership or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL request that Dostal Enterprises, Inc. offer Donald J. Kuehn immediate and full reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL request that Dostal Enterprises, Inc. remove from its files any reference to the termination of Donald J. Kuehn and notify him in writing that this has been done.

WE WILL make Donald J. Kuehn whole for any loss of pay and benefits he suffered by reason of the unlawful discrimination against him, plus interest.

MAERSK PACIFIC LIMITED D/B/A
MAERSK STEVEDORING COMPANY